

7.

WHY THE STATE IS DIFFERENT*

A common accusation against libertarianism is that we are unnaturally obsessed with tracing social and economic problems to the state, and, in doing so, we oversimplify the world.

If you let the people who say this keep talking, they will explain to you why the state is not all bad, that some of its actions yield positive results and, in any case, the state should not always be singled out as some sort of grave evil.

It is not inconceivable, they say, that the state is performing actions that weave themselves into the normal operation of society. The state is not always exogenous to the system but is sometime intrinsic to it. To constantly blame the state for our ills is as cranky as those who single out the Bilderbergers for all the world's ills; it is a half-truth gone mad.

Without attempting a wholesale refutation of this position, what this criticism overlooks is the uniqueness of the state as an institution. Let us turn our attention to a news item that underscores in what respects the state is different from the rest of society. It concerns the new law passed by Congress and signed by the president that criminalizes the sending of commercial spam. From this one case, we can observe a number of traits of the state that demonstrate just how truly outside of society it really is, and therefore why it is right to focus such close attention on it.

There are a number of commercial products on the market designed to crush spam, which can be defined as email you never asked to receive and do not want. It is not at all clear that sending someone such an email is really a coercive invasion of

*December 2003

property rights, but it is surely annoying, and so there is a market for methods of stopping it.

As always in commerce, there are those who stand to make a buck by solving problems. Entrepreneurs dream up new methods and capitalists take risks to bring them to market. Each product that is offered is distinctive. Consumers try out a number of different ones. The ones that work better than others—and sell for the right price and are easy to install—displace those that work less well. Profits flow to those who have done the best job.

This is the way the market works, and all is done voluntarily. The power to judge, to make some products succeed and some fail, is in the hands of consumers. Consumers base their judgments on what is good for them personally, so there is a constant feedback mechanism, from the desktop to the capitalists to the entrepreneurs to the traders who buy and sell stocks of companies that bring the products to market at the least-possible cost.

We can only marvel at how all of this is coordinated by the price system, which is the link between our subjective valuations and the real world of technology and resources. To succeed in this market requires creativity, imagination, a keen sense of judgment, a technological sense, and relentless attention to the needs of others. People make money even as society is served.

Now, let us contrast this gorgeous web of trial and error with the ham-handed approach of Congress and the president. Someone had the idea that spam is bad, and thus does the solution present itself: make it illegal, which is to say, threaten spammers with fines and jail and, if they resist enough, death. It is no more or less complicated than that. There is no trial and error process, no imagination required, no permission from consumers to be sought, and no investors to issue a judgment on the merits or demerits of this approach. Congress speaks, the president agrees, and it is done.

What if it doesn't work? Only under the rarest conditions does the state reverse itself or admit error. Its tendency instead

is to keep pounding away with its one and only hammer, even if the nail is all the way in or hasn't budged at all.

Hence Lesson One in the uniqueness of the state: the state has one tool, and one tool only, at its disposal: force.

Now, imagine if a private enterprise tried that same approach. Let's say that Acme Anti-Spam puts out a product that would tag spammers, loot their bank accounts, and hold them in captivity for a period of time, and shoot spammers dead should they attempt to evade or escape. What's more, the company doesn't propose to test this approach on the market and seek subscribers, but rather force every last email user to subscribe.

How will Acme Anti-Spam make money at its operation? It won't. It will fund its activities by taking money from your bank account whether you like it or not. They say that they can do this simply because they can, and if you try to stop it, you too will be fined, imprisoned, or shot. The company further claims that it is serving society.

Such a company would be immediately decried as heartless, antisocial, and essentially deranged. At the very least it would be considered uncreative and dangerous, if not outright criminal. Its very existence would be a scandal, and the people who dreamed up such a company and tried to manage it would be seen as psychopaths or just evil. Everyone would see through the motivation: they are using a real problem that exists in society as a means to get money without our permission, and to exercise authority that should belong to no one.

Lesson Two presents itself: the state is the only institution in society that can impose itself on all of society without asking the permission of anyone in particular. You can't opt out.

A seemingly peculiar aspect of the anti-spam law is that the government exempts itself from having to adhere to its own law. Politicians routinely buy up email addresses from commercial companies and send out unsolicited email. They defend this practice on grounds that they are not pushing a commercial service and that doing so is cheaper than sending regular mail,

and hence saves taxpayer money. It is not spam, they say, but constituent service. We all laugh at the political class for its hypocrisy in this, and yet the exemption draws attention to:

Lesson Three: the state is exempt from the laws it claims to enforce, and manages this exemption by redefining its criminality as public service.

What is considered theft in the private sector is “taxation” when done by the state. What is kidnapping in the private sector is “selective service” in the public sector. What is counterfeiting when done in the private sector is “monetary policy” when done by the public sector. What is mass murder in the private sector is “foreign policy” in the public sector.

This tendency to break laws and redefine the infraction is a universal feature of the state. When cops zoom by we don’t think of them as speeding but merely being on the chase. Killing innocents is dismissed as inevitable civilian casualties. So it should hardly surprise us that the state rarely or even never catches itself in the webs it weaves. Of course it exempts itself from its anti-spam law. The state is above the law.

The problem of spam will be solved one way or another. The criminal penalties will deter some but the real solution will come from the private sector, just as the problem of crime is lessened by the locks, alarm systems, handguns, and private security guards provided by the private sector. The state of course will take credit. Historians will observe the appearance and disappearance of spam coinciding with the before and after of the criminal penalties, while it will be up to those dismissed as wacky revisionists to give the whole truth.

This is the final feature of the state to which I would like to draw attention: it gets to write the history. Unlike the other three issues, this is not an intrinsic feature of the state but rather is a reflection of the culture. This can change so long as people are alert to the problem. And this is the role, the essential role, of libertarian intellectuals: to change the ideological culture in ways that make people aware of the antisocial nature of the

state, and how it always stands outside of society, no matter how democratic it may claim to be.

The case of the latest anti-spam law is only one chapter in a very long book that dates back to the beginning of recorded history, and extends as far as our existence on this earth. There will always be those who claim to have special rights over the rest of society, and the state is the most organized attempt to get away with it. To focus on these people as a unique problem is not an obsession, but the working out of intellectual responsibility.

8.

WHICH WAY THE YOUNG?*

A new poll shows 18–29 year olds turning against Bush, with 58 percent believing that the country is on the wrong track. This, however, doesn't translate into support for John Kerry. In fact the margin of difference between support for either major candidate is negligible. What does seem clear is that the wave of student enthusiasm for the GOP that came about after September 11 has subsided.

But since political polls are both tedious and intellectually vacuous, let's move on to the real question we should be asking: are students tending toward socialist thinking or free-market thinking as compared to the past?

It is hard to discern this based on polls alone, because of the enormous confusion concerning the meanings of liberal and conservative, and left and right. Any poll that stays within these conventions is likely to be misleading (even aside from all the other weaknesses of polling).

*May 2004